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**From:** Paul Hlavinka -MDE- [paul.hlavinka@maryland.gov]  
**Sent:** 5/14/2018 8:31:28 PM  
**To:** Ottinger, Elizabeth [Ottinger.Elizabeth@epa.gov]  
**CC:** Smith, Mark [Smith.Mark@epa.gov]; Trulear, Brian [Trulear.Brian@epa.gov]; Michael.Richardson@Maryland.gov [michael.richardson@maryland.gov]; Ed Stone -MDE- [ed.stone@maryland.gov]; Jennifer Nitsch -MDE- [jennifer.nitsch@maryland.gov]; Marjorie Mewbourn -MDE- [marjorie.mewbourn@maryland.gov]; Harry Hunsicker [harry.hunsicker@maryland.gov]; Talley, Sharon [sharon.talley@maryland.gov]  
**Subject:** Re: Updated Modification and Fact Sheet  
**Attachments:** 12\_SW\_A\_FactSheet\_Final\_May 2018.doc; Updated Restoration Data 5-2018.xlsx; 12SW Mod Restoration Language.docx

Elizabeth,

Thanks for your response. The markup of the Fact Sheet was really appreciated. You provided good clarity to the points we were making. All your comments were accepted and are reflected in the Fact Sheet attached. I will try call you later this week to verify if this addresses your concerns.

*EPA Concern: If 59% of the benefit to the Bay is coming from 13% of the facilities subject to restoration req'ts, is MDE going to be focused on those facilities and ensuring that they indeed meet the restoration req'ts by 2020? I'm curious as to the status of those facilities specifically with respect to the restoration req't. Can you please provide us with an update for just those facilities? (how many acres they are required to treat, how many are completed thus far, the practices that were reported for fulfilling the req't, etc.)*

MDE Response: I am attaching the latest update that we have. We do have a database that Jennifer continuously is updating as she receives additional information from these **permittees**.

*EPA Concern: For facilities that have not achieved the restoration req't by 2018 and elect to use trading (per 3.d.ii of revision), are those credits allowed to be used in perpetuity, or does the facility have to at some point put practices in the ground to account for those acres that they acquired via trading?*

MDE Response: Yes, they are allowed in perpetuity.

*EPA Concern: Can we add the phrase "no later than December 31, 2020" or something similar to the end of 3.d.i?*

MDE Response: That is the deadline specified in 3.a.

*EPA Concern: It is EPA's understanding that those facilities that may have until 12/31/20 to complete restoration will still have to comply with any additional restoration req'ts that may be included in the reissued permit. The compliance schedule does not preclude any additional terms and conditions that a new permit may impose on permittees.*

MDE Response: The language you suggest has been added to that section.

*EPA Concern: In my previous email (dated 4/20/18) EPA requested that MDE provide the compliance based strategy for any facilities that may fail to meet the 20% restoration. How does MDE intend to address any non-compliance issues that may occur beyond the 2020 date? What about facilities that have yet to submit any forms to MDE with restoration information? What is the strategy to get them to respond to determine their restoration status?*

MDE Response: Getting sites to respond has been and will continue to be a collaborative effort between permitting and compliance. We have a process that involves phone calls and visits by our team (permit group), and eventually a referral of the facility to an inspector in our compliance group. Once a facility is handed off, our Compliance program does have a standard policy. Missing the date in the permit will be treated as a significant violation of the permit. Compliance first uses their informal meeting request process, for the Significant Non-Compliance (SNC). During this period, enforcement discretion is used to evaluate the violation and set a plan. If required, a penalty is derived based on the economic benefit or other considerations. The final result is most likely forwarding the case to the Office of the Attorney General.

On Mon, May 7, 2018 at 8:11 AM, Ottinger, Elizabeth <Ottinger.Elizabeth@epa.gov> wrote:

Paul,

Fundamentally, EPA agrees with the approach you are taking. However, I do have a few questions/comments on the attached documents. I am also attaching a marked version of the fact sheet for your consideration.

1. If 59% of the benefit to the Bay is coming from 13% of the facilities subject to restoration req'ts, is MDE going to be focused on those facilities and ensuring that they indeed meet the restoration req'ts by 2020? I'm curious as to the status of those facilities specifically with respect to the restoration req't. Can you please provide us with an update for just those facilities? (how many acres they are required to treat, how many are completed thus far, the practices that were reported for fulfilling the req't, etc.)
2. For facilities that have not achieved the restoration req't by 2018 and elect to use trading (per 3.d.ii of revision), are those credits allowed to be used in perpetuity, or does the facility have to at some point put practices in the ground to account for those acres that they acquired via trading?
3. Can we add the phrase "no later than December 31, 2020" or something similar to the end of 3.d.i?
4. It is EPA's understanding that those facilities that may have until 12/31/20 to complete restoration will still have to comply with any additional restoration req'ts that may be included in the reissued permit. The compliance schedule does not preclude any additional terms and conditions that a new permit may impose on permittees.
5. In my previous email (dated 4/20/18) EPA requested that MDE provide the compliance based strategy for any facilities that may fail to meet the 20% restoration. How does MDE intend to address any non-compliance issues that may occur beyond the 2020 date? What about facilities that have yet to submit any forms to MDE with restoration information? What is the strategy to get them to respond to determine their restoration status?

Please let me know if you have any further questions or need to discuss any of my comments.

Thanks,

Liz

**From:** Paul Hlavinka -MDE- [mailto:paul.hlavinka@maryland.gov]

**Sent:** Monday, April 30, 2018 11:04 AM

**To:** Ottinger, Elizabeth <Ottinger.Elizabeth@epa.gov>; Smith, Mark <Smith.Mark@epa.gov>

**Cc:** Michael.Richardson@Maryland.gov; Ed Stone -MDE- <ed.stone@maryland.gov>; Jennifer Nitsch -MDE- <jennifer.nitsch@maryland.gov>; Marjorie Mewbourn -MDE- <marjorie.mewbourn@maryland.gov>

**Subject:** Updated Modification and Fact Sheet

I have updated both of these documents which are meant to address your concerns. Please review and provide feedback as soon as possible. I would like to move to Tentative and notify interested parties.

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[Click here](#) to complete a three question customer experience survey.

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